

The Examiner has rejected Claim 3 under 35 USC 112, second paragraph. Claim 3 has been amended.

Rejection

35 U.S.C. § 102

The Examiner has rejected Claim 1 of the present application as being anticipated by US Patent Number 4,493,139 to McClure (the '139 patent), and US Patent Number 4,722,468 to McClure (the '469 patent). The device of the '139 patent and the device of the '469 patent both disclose an apparatus for joining metal pipe. Neither of the referenced patents disclose "tension chains" or two chains directed from the lever to one side of the lever as well as "second tension chains" to the other side of the lever. The advantage of the present application is that a member having a chain connection on each side of the pipe provides a distribution of force centered on the pipe axis. Where pinpointed pressure of the prior art devices would crack a PVC pipe, the device of the present application provides an even distribution of force in an axial direction without undue pressure on the surface of the pipe.

The '468 patent discloses a two chain system with two C shaped members that are pulled off center at the top of the C shaped member. One of the advantages of the present invention is that the presence of at least two "tension chains" provides a thrusting force that is centered on the pipe rather than offset to the side of the pipe. Prior art devices useful for welding metal pipes could provide a greater force and greater torque as metal pipes are much stronger than PVC pipes. New lightweight plastic materials require a more careful application of force to prevent breakage. It is important to note that the present application claims more than one chain attached to

each member. Each member has more than one chain attaching the member to the lever.

As can be seen from Figure 1 of the '468 patent and Figure 1 of the '139 Patent, the two C shaped members of the references are drawn towards each other by the lever and one chain each. This causes the top of the C shaped member to be drawn towards the union and the bottom of a C shaped member to be forced away from the union. For use on a plastic or polymer material, the torsion of a C shaped member pulled at one point off center would cause the pipe to bend or bow forcing each pipe to bend away from the lever at the point of the desired union. The present invention avoids this problem by providing a force that is axially centered on the pipe and therefore forces the pipe towards the desired union without bending the pipes up or down. This is accomplished by using multiple "tension chains" about a horseshoe shaped member and at "tension chains" about a bull plate member.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The "tension chains" extending from a horseshoe shaped member of the present invention is not disclosed or suggested by the references cited by the Examiner. The "tension chains" extending from the bull plate are not disclosed or suggested by the references cited by the Examiner.

As discussed above, the cited references do not set forth each and every element as claimed in the present application as amended. Therefore, withdrawal of the rejections is respectfully requested.

35 U.S.C. § 103

The Examiner has rejected Claim 2 as being unpatentable over the '139 Patent in view of US Patent No. 2,755,731 to Carr (Carr) as well as the '468 Patent in view of Carr. Claim 2 has been amended to include the orientation of the plurality of chains attached to the first horseshoe shaped member and the orientation of the at least two chains attached to the second bull-plate member. Carr does not disclose a plurality of chains extending from a lever mechanism to a first member and at least two chains extending from a lever mechanism to a second member. Further Carr does not disclose a lever mechanism, but rather a screw type attachment with a chain that wraps around a pipe. This is distinct from a chain that joins a lever in an axial direction. The chain of Carr is wound about a pipe to secure a clamp to the workpiece and not to provide a balanced force in an axial direction. Further, the presence of a first chain in an axial direction and a second chain wound about a pipe, would not suggest the use of two or more chains in an axial direction to provide a balanced force in an axial direction. The combination of Carr and the '139 patent would yield a C clamp that is secured to the pipe with a screw and a wound chain. The combination of Carr and the '468 patent would likewise yield a C clamp that is secured to the pipe with a screw and a wound chain. The cited references do not teach or suggest all of the elements of the present invention as claimed.

The Examiner has rejected claim 3 as being unpatentable over the '139 Patent in view of US Patent No. 5,640,748 to Harrison (Harrison). Harrison discloses an apparatus that uses two large clamps to pinch a PVC pipe. The combination of the '139

Patent and Harrison would yield two large clamps about a PVC pipe that when drawn in the axial direction are biased towards a lever and create a torque about each clamp thereby pinching and bowing the pipe and potentially damaging the pipe. As discussed above, the pressure of a scissors or C clamp about a pipe pressures the pipe in a radial direction. This is distinct from the device of the present application. The '139 Patent and Harrison do not teach or disclose all of the elements of the Present Invention as claimed. In particular, the plurality of chains extending to a first member and the at least two chains extending from a second member are neither taught nor suggested in these references.

In order to establish a *prima facie* case of obviousness under 35 U.S.C. §103, the Examiner must demonstrate that there is a suggestion or motivation, either in the references themselves, or in the knowledge generally available to one of ordinary skill in the art, to modify the references or combine the reference teachings. Furthermore, the prior art references must teach or suggest all of the claim features when combined. It is well settled law that the prior art itself must provide the motivation for a proposed alteration of a reference. Ex parte Chicago Rawhide Manufacturing Co., 220 U.S.P.Q. 351, (B.O.P.A. 1984). Moreover, the suggestion must be plain and clear or the rejection is untenable. Fromson v. Offset Plate, Inc., 225 U.S.P.Q. 26, 32 (Fed. Cir. 1985); Kimberly-Clark Corp. v. Johnson & Johnson, 223 U.S.P.Q. 603, 610 (Fed. Cir. 1984). The Examiner is not free to pick bits and pieces from the prior art and, with the hindsight benefit of applicants' disclosure, attempt to reconstruct the invention. Orthopedic Equipment, Inc. v. U.S., 217 U.S.P.Q. 193, 199 (Fed. Cir. 1983). Therefore, withdrawal of the rejections of Claim 2 and Claim 3 is respectfully requested.

Conclusion

In view of the foregoing remarks, it is believed that this Application is now in condition for allowance. Early and favorable reconsideration is respectfully solicited.

If the Examiner has any questions regarding the foregoing amendment and remarks, or if prosecution of this Application could be furthered by a telephone interview, the Examiner is requested to telephone the Applicants' undersigned attorney.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'S. J. Fields', written over a horizontal line.

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